IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 944 of 2001 (M/B)

Fredrick Smetacek (Jr).
S/O Late Fredrick Smetacek (Sr.),
Chief Co-Ordinator,
Society of Appeal For Vanishing Environments,
(S.A.V.E.), Bhimtal, Nainital. …….. Petitioner.

Versus

1. Collector, Nainital.
2. Sarpanch, Van Panchayat at June State, Bhimtal, Nainital
3. Chairman, Nagar Panchayat, Bhimtal.
4. Pradhan, Gram Sabha,
   Bhaktura, June Estate, Bhimtal, Nainital
5. Nainital Jheel Parishetriya Visesh Shetra Vikas Pradhikaran, Waverly Compound, Nainital
   Through Its Secretary.
6. Jal Nigam through Its Executive Engineer, Nainital.
7. Jal Sansthan Through Its General Manager, Nainital.
8. Irrigation Department,
   Through Its Executive Engineer, Nainital.
9. Forest Department,
   Through Its Divisional Forest Officer,
   Nainital. …… Respondents

Mr. B.P.S. Mer, Advocate on behalf of Mr. V.B.S. Negi, Advocate for the petitioner.
Mr. N.C. Gupta, Standing Counsel for respondent nos. 1, 8 and 9.
None for respondents nos. 2 to 4.
Mr Shobhit Saharia, Advocate for respondent no. 5.
Mr. Manish Dalakot, Advocate on behalf of Mr. D.S. Patni, Advocate for respondents nos. 6 and 7.

JUDGMENT

Coram: Hon'ble Rejeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. B.P.S. Mer, Advocate on behalf of Mr. V.B.S. Negi, Advocate for the petitioner.

Mr. N.C. Gupta, Standing Counsel for respondents nos. 1, 8 and 9.

None for respondents nos. 2 to 4.

Mr Shobhit Saharia, Advocate for respondent no. 5.

Mr. Manish Dalakoti, Advocate on behalf of Mr. D.S. Patni, Advocate for respondents nos. 6 and 7.

They are heard.

2. The petitioner has filed this writ petition styled as 'Public Interest Litigation' for the following reliefs:

> "i) Issue a writ, order or direction in the nature of mandamus commanding the responsible authorities to stop the felling of trees and remove the garbage and clear the deltas which have been formed.
>
> ii) Issue a writ, order or direction in the nature which this Hon'ble Court may deem necessary in the circumstances of the case."

3. Counter affidavits have been filed on behalf of respondents Nos. 1,5, 8 and 9. In the counter affidavit filed on behalf of respondent No. 5, following averments have been made in paras 7 to 10:

> "7. That in reply to the contents of para 9 of the writ petition it is submitted that the respondent authority came into existence vide gazette notification of State of U.P. dated 21 October, 1989 and was revised vide Government Order dated 9th September, 1994. The referred notifications earmarked the area under the jurisdiction of the respondent authority. A copy each of the referred is annexed herewith and marked as **ANNEXURE NO. CA1 & CA2** respectively to this affidavit. The area falling under the notification is being looked after by the authority and the construction activities are being allowed only after getting after the map sanctioned from the authority and in the process NOCs (No Object Certificates) are obtained from the following departments before sanctioning of map for the construction – 1. Country and Town Planning Department. 2. Forest Department 3. Jal Sansthan 4. Jal Nigam 5. Geologist 6. Power Corporation 7. PWD and 8. Town Area Bhimtal. In case the construction is found to be raised without obtaining the sanction or in violation of the plan sanctioned, the respondent authority takes appropriate action as per the law.

8. That the contents of para 10 of the writ petition do nor require any reply from the answering respondent.

9. That in reply to the contents of para 11 of the writ petition this is clarified that Bhimtal and Sattal Lakes are being maintained by Irrigation Department as water reservoir and as such optimum water level of the lake is maintained by them with the help of sluice gates. In the year 2000-2001 Irrigation Department has cleared silt from Bhimtal Lake and strengthened drainage system (spring) which replenishes the lake and also constructed Pakka Drains and silt traps in Sattal Lake. It is further clarified that the District Board has granted license to the shops (thatches) being run at Sattal for which the District Board realizes the annual license fees. There is only one Pakka Construction on the Sattal which had been ordered to be demolished by the respondent authority. However, or an appeal preferred by the party, the matter has been reminded back to the respondent authority for a fresh hearing by the appellate authority.

10. That in reply to the contents of paras 12,13 & 14 of the writ petition it is submitted that same can be replied to by the concerned authorities. However, it is categorically stated that the raising of issue of sale of land and encroachment thereon by the petitioner is a coloured exercise which stands proven by the fact the petitioner has himself sold certain piece of land, holding the power of attorney of the said property to several persons which include a one K.P. Aggarwal, who intended to colonize the said area. The petitioner is now himself involved in the litigation involving the sale of land. Rests of the contents of paras under reply cannot be replied to for want of knowledge. This is further to submit that the Nagar Panchayat, Bhimtal undertook an exercise with the officials of the respondent authority for the removal of the encroachments on the road side, board & hordings displayed at public places."

4. From the facts narrated in the above quoted paras 7 to 10 of the counter affidavit filed on behalf of respondent No. 5 Lake Development Authority, it is apparent that petitioner, himself, is involved in selling the land to the colonizers in the said areas. Surprisingly, the petitioner has not even uttered a word about it in his petition.

5. In view of the above glaring facts appearing in the counter affidavit against the petitioner, we decline to entertain the petition filed by the petitioner as ‘Public Interest Litigation’, as we are satisfied that it is not a bonafide petition.

6. The petition, therefore, fails and is, hereby, dismissed.

(Prafulla C. Pant, J) **(Rajeev Gupta, C.J.)**

24.05.2006 **24.05.2006**

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